

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4166 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

SHAH TRANSPORT CO

Appearance:

MR JD AJMERA for Petitioner
None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/11/97

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly in the third round but none put appearance for the respondent. Heard the learned counsel for the petitioner and perused the special civil application.
2. Challenge has been made by the petitioner by this special civil application to the order of the learned

Assistant Judge, Jamnagar passed in Misc. Civil Appeal No.90/84 confirming the injunction granted by the learned Civil Judge (S.D.), Jamnagar below Ex.6 in Regular Civil Suit No.427/83 whereby the petitioner has been restrained from recovering the excess of Rs.100/- even though the meter reading show that calls were made excess than Rs.100/-.

3. The respondent on his request was provided with a public telephone at his shop by the petitioner along with coin collection box. An agreement was entered into between the parties on 19-11-1981. Condition 9 of the said agreement provides that a party of the second part guarantees local call revenue of Rs.100/- per month in case of private CCB, P.C.O. and Rs.200/- per month in the case of P.C.O. with ordinary H.M.T. instrument. Clause-10 of the said agreement provides that a party of the second part shall be liable to pay the Government call charges as per the number of call meter at the local call rate as amended from time to time. As per the aforesaid agreement the respondent was required to pay minimum Rs.100 per month if the call meter shows less than Rs.100/-. If the call meter exceeds Rs.100/- then he has to pay as per the actual meter reading. The petitioner demanded Rs.1809-80 from the respondent under the bill dated 25th March, 1983 which has been disputed by the respondent. He challenged that demand by filing Regular Civil Suit No.427/83 in the Court of Civil Judge (S.D.) Jamnagar. Along with the said suit he filed an application for grant of temporary injunction and the trial court passed an order on 28th April, 1983 that, "Ad Interim injunction is granted subject to the condition that plaintiff should deposit with the department minimum charges of Rs.100/- per month as outstanding till the objections are filed". The petitioner preferred an appeal against the said order and the appeal came to be dismissed under the order dated 19th April, 1985. Hence, this special civil application.

4. The grant of temporary injunction in the present case by the court below is wholly arbitrary and unjustified. It is a case of the demand of amount of telephone charges which was in the present case a public telephone call booth and permitting the respondent to enjoy the telephone only subject to the condition of payment of minimum charges of Rs.100/- per month as against the outstanding demand is wholly arbitrary. In such matters though even if it is taken that the respondent has a *prima-facie* case it cannot be said to be a case where he will suffer irreparable injury which cannot be compensated in terms of money. It is a case

where the petitioner demanded the charges of telephone calls and that amount was only of Rs.1809-80 and as such it cannot be said that in case the injunction is not granted he will suffer any irreparable injury much less an irreparable injury to the extent where it cannot be compensated in terms of money. So ultimately if the respondent succeeds in the suit, appropriate order could have been passed for refund of the excess amount paid by the respondent to the petitioner but it cannot be said that merely because *prima-facie* case has been held to be in favour of the plaintiff-respondent, the injunction has to be granted. This approach of the court below is wholly perverse. In the matter of grant of temporary injunction which has to be considered by the courts below that three ingredients are to be established and only thereafter the injunction can be granted. In the present case at the most it can be said that one ingredient that *prima-facie* case is there in favour of the respondent but two other ingredients cannot be said to be in his favour.

5. The learned counsel for the petitioner raised another objection before this Court that the suit itself is not maintainable as the Civil Court's jurisdiction is impliedly ousted in view of the provisions of section 7-B of the Indian Telegraph Act, 1885. In support of his contention, the counsel for the petitioner placed reliance on the decision of this court in the case of Govindbhai P. Chovatia vs. Gujart Telecom Circle reported in 1995 (2) GLH 1041. I find sufficient merits in this contention of the learned counsel for the petitioner. In that case there was also the matter of demand of telephone bill charges and this Court has held that the Civil Court's jurisdiction is barred. The suit itself is not maintainable in the present case and as such, the grant of injunction otherwise also is without jurisdiction.

6. In the result, this special civil application is allowed and the order of the learned Assistant Judge, Jamnagar dated 19th April, 1985 passed in Misc. Civil Appeal No.90/84 confirming the injunction granted by the learned Civil Judge (S.D.) Jamnagar below Ex.6 in Regular Civil Suit No.427/83 is quashed and set aside and it is hereby declared that the civil suit filed by the plaintiff-respondent was not maintainable. The civil suit filed by the respondent bearing No.427 of 1983 is hereby ordered to be dismissed as not maintainable. The dismissal of the suit will not come in the way of the plaintiff-respondent to take up the matter in arbitration. Rule made absolute in the aforesaid terms with no order as to costs.

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